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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/603,947	06/25/2003	W. Perry Dowst	65841-017 (WMST-003)	3129
20874 7590 05/18/2007 MARJAMA & BILINSKI LLP 250 SOUTH CLINTON STREET SUITE 300 SYRACUSE, NY 13202			EXAMINER PRICE, CARL D	
			ART UNIT 3749	PAPER NUMBER
			MAIL DATE 05/18/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/603,947	Applicant(s) DOWST ET AL.	
	Examiner CARL D. PRICE	Art Unit 3749	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10/2/2006;01/25/2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 106-160 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 106-160 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>11/08/2006</u> | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Response to Arguments

Applicant's arguments filed 10/2/2006 and 01/25/2007 have been fully considered but they are not persuasive.

With regard to the prior art reference of **GB000882881 (Horner)** applicant argues the following:

"Firstly, the applicants do not agree that this reference is in the "same portable heater field of endeavor" as the present invention. This reference describes a tea kettle which may be portable to the extent that it is moved to and from a stove but is not a self-contained, portable heating system which includes a heater with a top housing, bottom housing and a burner. Accordingly, we do not believe that the tea kettle design is necessarily in the same portable heater field of endeavor as suggested by the Examiner."

The examiner however maintains the position that **GB000882881 (Horner)** is indeed related to applicant's same portable heater filed of endeavor at least in the manner suggested in applicant's remarks. That is, the tea kettle "may be portable to the extent that it is moved". Notwithstanding the potential uses or applications for a heating vessel of the type disclosed **GB000882881 (Horner)** is at least of the applicant's same portable heated cooking vessel and addresses the same problem of enhancing the transfer of heat from sources not unlike that intended by applicant. **GB000882881 (Horner)** discloses, for example, "heating the vessel by "a gas flame or by a flame from an oil or spirit burner burner" and where vessel construction is intended to provide "improved means for distributing the heat of the flame or gases over the base of the appliance".

With regard to the prior art reference of **US002154305 (Goerl)** applicant argues the following:

"It should be recognized that the '305 patent has been publicly available since 1939 and that the '881 has been publicly available since 1961. If the combination of the features of these two references were obvious to one skilled in the art, why has no one else (i.e. other than the present inventors), made such a combination in the last 45 years?"

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In response to applicant's argument based upon the age of the references, contentions that the reference patents are old are not impressive absent a showing that the art tried and failed to solve the same problem notwithstanding its presumed knowledge of the references. See *In re Wright*, 569 F.2d 1124, 193 USPQ 332 (CCPA 1977).

Furthermore, objective evidence which must be factually supported by an appropriate affidavit or declaration to be of probative value includes evidence of unexpected results, commercial success, solution of a long-felt need, inoperability of the prior art, invention before the date of the reference, and allegations that the author(s) of the prior art derived the disclosed subject matter from the applicant. See, for example, *In re De Blauwe*, 736 F.2d 699, 705, 222 USPQ 191, 196 (Fed. Cir. 1984) ("It is well settled that unexpected results must be established by factual evidence." "[A]ppellants have not presented any experimental data showing that prior heat-shrinkable articles split. Due to the absence of tests comparing appellant's heat shrinkable articles with those of the closest prior art, we conclude that appellant's assertions of unexpected results constitute mere argument."). See also *In re Lindner*, 457 F.2d 506, 508, 173 USPQ 356, 358 (CCPA 1972); *Ex parte George*, 21 USPQ2d 1058 (Bd. Pat. App. & Inter. 1991).

And, applicant is reminded that the arguments of counsel cannot take the place of evidence in the record. *In re Schulze*, 346 F.2d 600, 602, 145 USPQ 716, 718 (CCPA 1965). Examples of attorney statements which are not evidence and which must be supported by an appropriate affidavit or declaration include statements regarding unexpected results, commercial success, solution of a long-felt need, inoperability of the prior art, invention before the date of the reference, and allegations that the author(s) of the prior art derived the disclosed subject matter from the applicant.

With regard to the prior art reference of **DE3339848** applicant argues the following:

"Applicant is reminded that the prior art reference of **DE3339848** is cited merely to teach the known advantages sizing a burner to be smaller than a heat transfer opening of a vessel assembly, to ensure optimal heat transfer. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references.

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See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986)."

With regard to the prior art reference of **US002154305 (Goerl)**, as applied to claims 151-154 and 159, applicant argues the following:

"The Examiner has thus relied on the definition of the 'external bottom side of the vessel' to include the elements 32 and 53 rather than only the external bottom side 31 at the bottom end of the vessel 13. For the reasons discussed hereinabove, we believe this to be an improper and incorrect reading of the claim language."

This argument is however not commensurate with the scope of applicant's claimed invention, nor is it commensurate with the applicant's own disclosure. In this regard, the elements in **US002154305 (Goerl)** do indeed meet the limitations of the claimed invention, since it is noted that applicant's "top housing" (e.g. -152, 158) are associated with the external bottom "side" of the vessel rather than the bottom wall as suggested by applicant. It is further noted that the vessel of **US002154305 (Goerl)** does indeed include a bottom (31) arranged in the same manner intended by applicant.

Also, with regard to the prior art reference of **US002154305 (Goerl)**, as applied to claims 151-154 and 159, applicant argues the following:

"Even though the diameter of the lower end rim (55) is less than the diameter of the vessel outlet port (35), it does not follow that the bottom housing 17 can be placed in the vessel cavity, since the lower wall portion 33 is conically tapered and would not allow the bottom housing 17 to be placed therein in an upright position. For that reason, the bottom housing 17 is placed within the container 13 in an inverted position as will be seen in Fig. 4. For clarification purposes claim 152 has been amended to further distinguish over the '305 reference."

In this regard, applicant's attention is directed to Figure 4 of **US002154305 (Goerl)** which shows the bottom housing (17) contained within the interior cavity of the vessel (13).

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Claims 106-160 remain rejected for the reasons set forth herein above as well as for the reasons set forth in the examiner's action re-stated herein below.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims Rejected under 35 U.S.C. 102(b)

Claims **151-154** and **159** are rejected under 35 U.S.C. 102(b) as being anticipated by **US002154305** (of record).

US002154305 shows a portable heating system comprising:

- a vessel (13) having a thermally conductive bottom end defining an external bottom side (31, 32, 33) of the vessel;
- a top housing (16) having a top rim (53) coupled circumferentially to the external bottom side of the vessel (at 32, 53), a side structure (54) extending downwardly from the top rim (53) and having a plurality of exhaust vents (82) formed therein, and a bottom rim (48, 51);
- a bottom housing (17) having a top rim (49, 52) configured to be selectively coupled to the top housing bottom rim (48) and containing a burner (15) having a heat outlet head disposed below the external bottom side of the vessel when the bottom housing is coupled to the top housing (see figure 8), the bottom housing further having a plurality of air inlet vents (81) formed therein;
- wherein the bottom housing is so configured and sized as to be removable from said top housing and temporarily placed for storage in the vessel cavity (see figure 4).

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- In regard to claim 152, since the diameter of the lower end rim (55) of the bottom housing (17) is less than the diameter of vessel outlet port (35) it is capable of being place in the vessel in the manner set forth in the claim.
- In regard to claims 153 and 154, the fuel source and burner are formed as a single unit and supported by and at a lower bottom housing location (i.e. –below the top rim (49)).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims Rejected under 35 U.S.C. 103(a)

Claims **106-116** are rejected under 35 U.S.C. 103(a) as being unpatentable over **US002154305** (of record) in view of **GB000882881** (newly cited).

US002154305 shows a portable heating system comprising:

- a vessel (13) having a thermally conductive bottom end defining an external bottom side (31, 32, 33) of the vessel;

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- a top housing (16) having a top rim (53) coupled circumferentially to the external bottom side of the vessel (at 32, 53), a side structure (54) extending downwardly from the top rim (53) and having a plurality of exhaust vents (82) formed therein, and a bottom rim (48, 51);
- a bottom housing (17) having a top rim (49, 52) configured to be selectively coupled to the top housing bottom rim (48) and containing a burner (15) having a heat outlet head disposed below the external bottom side of the vessel when the bottom housing is coupled to the top housing (see figure 8), the bottom housing further having a plurality of air inlet vents (81) formed therein

US002154305 shows and discloses the invention substantially as set forth in the claims with possible exception to:

- a single thermally conductive member (15) along the entire extent of a peripheral edge of the external bottom side. The member comprising a continuous piece of aluminum material soldered to and positioned adjacent to and extending continuously over the bottom of a vessel (see page 2, lines 100-105).

GB000882881 teaches, from applicant's same portable heater field of endeavor, placing a single thermally conductive member (15) along the entire extent of a peripheral edge of the external bottom side. The member comprising a continuous piece of aluminum material soldered to and positioned adjacent to and extending continuously over the bottom of a vessel (see page 2, lines 100-105).

In regard to claims **106 -116**, for the purpose of making the base readily separable from the base and the base is storable within the vessel and to increase the thermal heat efficiency by confining the flow to heat about the vessel bottom, it would have been obvious to a person having ordinary skill in the art to modify **US002154305** to include a single thermally conductive

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member (15) along the entire extent of a peripheral edge of the external bottom side in the manner set forth in applicant's claims, in view of the teaching of **GB000882881**.

In regard to claims **111-116**, since shape of the protrusions the manner of coupling (e.g. – soldering, brazing, gluing, etc.), the height of the vessel, length of the protrusions, aspect ratio of the protrusions, etc. would depend on numerous design concerns such as the overall size and shape of both the burner and vessel, the type of substance being heat, the amount of heat intended to be transferred to the substance through the vessel wall, etc., to configure the protrusions to have dimensions and to be attached in the manner set forth in the claims, can be viewed as nothing more than merely a matter of choice in design absent the showing of any new or unexpected results produced there from over the prior art of record. Further in this regard it is noted that **GB000882881** itself teaches that elements, such as apertures 20, are of such a size “that the maximum amount of heat is absorbed by the strip 15 which is secured in intimate heat-conducting relationship with the base of the kettle” (beginning page 2, line15).

Claims Rejected under 35 U.S.C. 103(a)

Claims **117-149** are rejected under 35 U.S.C. 103(a) as being unpatentable over **US002154305** (of record) in view of **GB000882881** (newly cited) and **DE 33 39 848** (of record).

US002154305 shows a portable heating system comprising:

- a vessel (13) having a thermally conductive bottom end defining an external bottom side (31, 32, 33) of the vessel;
- a top housing (16) having a top rim (53) coupled circumferentially to the external bottom side of the vessel (at 32, 53), a side structure (54) extending downwardly from the top rim (53) and having a plurality of exhaust vents (82) formed therein, and a bottom rim (48, 51);
- a bottom housing (17) having a top rim (49, 52) configured to be selectively coupled to the top housing bottom rim (48) and containing a

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burner (15) having a heat outlet head disposed below the external bottom side of the vessel when the bottom housing is coupled to the top housing (see figure 8), the bottom housing further having a plurality of air inlet vents (81) formed therein.

US002154305 shows and discloses the invention substantially as set forth in the claims with possible exception to:

- a single thermally conductive member (15) along the entire extent of a peripheral edge of the external bottom side. The member comprising a continuous piece of aluminum material soldered to and positioned adjacent to and extending continuously over the bottom of a vessel (see page 2, lines 100-105).

GB000882881 teaches, from applicant's same portable heater field of endeavor, placing a single thermally conductive member (15) along the entire extent of a peripheral edge of the external bottom side. The member comprising a continuous piece of aluminum material soldered to and positioned adjacent to and extending continuously over the bottom of a vessel (see page 2, lines 100-105).

DE 33 39 848 teaches (figures 1 and 2), from applicant's same portable heater field of endeavor dimension the outer burner diameter to be less than the diameter of the inner central cavity formed by the thermally conductive members, for the purpose of effectively directing heat from the burner flames into and along the heat transfer passages.

In regard to claims **117-149**, for the purpose of making the base readily separable from the base and the base is storable within the vessel and to increase the thermal heat efficiency by confining the flow to heat about the vessel bottom, it would have been obvious to a person having ordinary skill in the art to modify **US002154305** to include a single thermally conductive member (15) along the entire extent of a peripheral edge of the external bottom side in the manner set forth in applicant's claims, in view of the teaching of **GB000882881**. Furthermore, in regard to claims **117-149**, for the purpose of effectively directing heat from the burner flames

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into and along the heat transfer passages, it would have been obvious to a person having ordinary skill in the art to dimension the outer burner diameter to be less than the diameter of the inner central cavity formed by the thermally conductive members, in view of the teaching of **DE 33 39 848**.

In regard to claims **122-128, 134-139** and **145-149**, since shape of the protrusions the manner of coupling (e.g. – soldering, brazing, gluing, etc.), the height of the vessel, length of the protrusions, aspect ratio of the protrusions, etc. would depend on numerous design concerns such as the overall size and shape of both the burner and vessel, the type of substance being heat, the amount of heat intended to be transferred to the substance through the vessel wall, etc., to configure the protrusions to have dimensions and to be attached in the manner set forth in the claims, can be viewed as nothing more than merely a matter of choice in design absent the showing of any new or unexpected results produced there from over the prior art of record. Further in this regard it is noted that **GB000882881** teaches that elements, such as apertures 20, are of such a size “that the maximum amount of heat is absorbed by the strip 15 which is secured in intimate heat-conducting relationship with the base of the kettle” (beginning page 2, line15).

Claims 156-160: Rejected under 35 U.S.C. 103

Claims **156-158** and **160** are rejected under 35 U.S.C. 103(a) as being unpatentable over **US002154305** (of record) in view of **FR 2 446 097** (of record).

US002154305 shows and discloses the invention substantially as set forth in the claims with possible exception to:

- an igniter portion disposed above the burner and a recess or indentation in the cover (15) for receiving or accommodate the extending igniter portion; and
- friction or slot and dimple attachment means for the upper and lower housings.

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FR 2 446 097 teaches, from applicant's same portable heater field of endeavor, providing portable collapsible heaters with burners of the type having a threaded fuel source connection located in the lower portion thereof for connection to a fuel source there below.

In regard to claim **155-158** and **160**, for the purpose of providing a suitable alternative burner and fuel source, it would have been obvious to a person having ordinary skill in the art to modify **US002154305** to include a burners of the type having a threaded fuel source connection located in the lower portion, in view of the teaching of **FR 2 446 097**. Also, Official Notice is taken that it is well known to place igniters above, that is, downstream of fuel exiting burner heads as a recognized optimal location to effect ignition of the fuel. Thus, in view of that which is well known, it would have been obvious to a person having ordinary skill in the art to provide **US002154305** with such an igniter arrangement. Regarding any necessary recess or indentation in the cover for receiving or accommodate the extending igniter portion it is noted that the covers (23, 39,40, 41) of **US002154305** is formed with such a recess capable of performing this function. In regard to claims **159** and **160**, Official Notice is taken that burner components are known to be secured by slot and dimple attachment means for (see for example **US004374489**). Thus, it would have been obvious to a person having ordinary skill in the art to modify attachment of the upper and lower housings in **US002154305** to include such well known securing and fastening arrangement.

Conclusion

See the attached PTO FORM for prior art made of record that is not relied upon, which is considered pertinent to applicant's disclosure.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after

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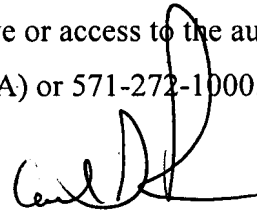
the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

USPTO CUSTOMER CONTACT INFORMATION

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CARL D. PRICE whose telephone number is (571) 272-4880. The examiner can normally be reached on Monday through Friday between 6:30am-3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kenneth Rinehart can be reached on (571) 272-4881. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



CARL D. PRICE
Primary Examiner
Art Unit 3749